



THE ATTORNEY GENERAL OF TEXAS

WAGGONER CARR
ATTORNEY GENERAL

AUSTIN 11, TEXAS

February 5, 1964

Honorable Robert Barton
County Attorney
Kerr County
Kerrville, Texas

Opinion No. C-214

Re: Penalty for violating
Section 5, Art. 734a,
V.P.C. (Texas Barber
Law)

Dear Mr. Barton:

You have requested the opinion of this office as to whether there is a penalty for the violation of Section 5, Article 734a, Vernon's Penal Code. Your specific problem is the question of charging an assistant barber with the offense of practicing barbering while not under the immediate personal supervision of a registered barber.

Articles 728 through 734, Vernon's Penal Code, are derived from 37th Leg., Acts 1921, ch. 79, p. 155, have been codified under Chapter 4 of Vernon's Penal Code, and remain without change. These articles define barbers, barber shops, beauty parlors, provide registration, require certain equipment, prohibit employment of those with specified disease, provide certain cleanliness, and prohibit sleeping on premises. Article 734 provides for the penalty:

"Whoever violates any provision of this chapter or fails or refuses to comply with any provisions thereof shall be fined not to exceed one hundred dollars."

In 1929, the 41st Legislature, 1st Called Session, Page 166, Chapter 65, enacted the Texas Barber Law. This Act has been codified under Chapter 4, Vernon's Penal Code, as Article 734a. During the ensuing years, amendments have been enacted but none specifically apply to the subject matter of this opinion. Section 5, Article 734a provides:

"No registered assistant barber shall independently practice barbering, but he may as an assistant barber do any and all of the acts constituting the practice of barbering under the immediate personal supervision of a registered barber."

The penalty in Article 734a, is set out in Section

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24, providing a fine of not less than \$25.00 nor more than \$200.00 for specifically enumerated violations:

"(a) The violation of any of the provisions of Sections 1, 2 and 3 of this Act;

"(b) Permitting any person in one's employ, supervision, or control to practice as a barber or assistant barber unless that person has a certificate of registration as a registered assistant;

"(c) Obtaining or attempting to obtain a certificate of registration by fraudulent representation;

"(d) The willful failure to display a certificate of registration as required by Section 19 of this Act. As amended Acts 1933, 43rd Leg., p. 802, ch. 235, § 1."

Sections 1, 2 and 3 provide:

"Section 1. It shall be unlawful for any person to engage in the practice or attempt to practice barbering in the State of Texas without a certificate or registration as a registered barber issued pursuant to the provisions of this Act, by the Board of Barber Examiners hereinafter created.

"Sec. 2. It shall be unlawful for any person to serve or attempt to serve as an assistant barber under a registered barber within the State of Texas without a certificate of registration as a registered assistant barber, issued by the Board herein provided for.

"Sec. 3. It shall be unlawful for any person to operate a barber shop within this State unless such shop shall at all times be under the direct supervision and management of a registered barber."

Articles 728 through 734, Vernon's Penal Code, make no reference to registered assistant barbers or assistant barbers. Article 734a, Vernon's Penal Code, makes no reference to said Articles 728-734 nor did the Legislature purport to

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amend Chapter 4 of Vernon's Penal Code. A closer examination of Section 5 shows it to be a defense or exception to the offenses provided in Sections 1 and 3. A complaint charging an assistant barber with the offense of practicing barbering while not under the direct supervision of a registered barber should be made under Section 1 or Section 3, and the penalty under Section 24, Article 734a, Vernon's Penal Code, is applicable. Application of the penalty under Article 734 to Section 5, Article 734a, would do violence to Article 3, Vernon's Penal Code.

SUMMARY

The penalty provision under Article 734, Vernons' Penal Code, is not applicable to a violation under Section 5, Article 734a, Vernon's Penal Code; offense of barbering by assistant not under direct supervision of registered barber is punishable, under proper facts, by Section 1 or Section 3; Article 734a, Vernon's Penal Code.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: Vince F. Taylor
Vince F. Taylor
Assistant Attorney General

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APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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